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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.
No. 882.

UNITED STATES OF AMERICA,
Appellant,

vs.

KENNETH E. STALEY, LEE N. MAYS, ROY M. CASH, and ROBERT M. O'CONNOR,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

MOTION TO AFFIRM.

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The appellees Kenneth E. Staley, Lee N. Mays, Roy M. Cash, and Robert M. O'Connor move that the judgment of the District Court dismissing as to them Count One of the indictment be affirmed pursuant to Paragraph 1(c) of Rule 16 of the Revised Rules of this Court.

Question Presented.

Whether corporate officials may be prosecuted under Section 1 of the Sherman Act for having in the course of their corporate duties authorized, ordered, or done acts constituting in whole or in part a violation of the

antitrust laws by their corporation, or whether Section 14 of the Clayton Act provides the sole criminal liability for such acts of corporate officials.

Statement.

The Statement contained in the appellant's Jurisdictional Statement adequately frames the issue presented here.

Argument.

This case, as appellant correctly states, presents the same issue as that involved in *United States v. Wise*, No. 488, this Term, in which this Court noted probable jurisdiction on December 18, 1961, 368 U. S. 945, and which was argued on April 16, 1962. The question is whether corporate officials may be prosecuted under Section 1 of the Sherman Act for having in the course of their corporate duties authorized, ordered, or done acts constituting in whole or in part a violation of the antitrust laws by their corporation.* The District Court in this case—as did the District Court in *Wise*—dismissed an indictment under Section 1 of the Sherman Act, holding that Section 14 of the Clayton Act provides the sole criminal liability for such acts of corporate officials.

The briefs for the appellee in the *Wise* case (both on the Motion to Affirm and on the merits) present the arguments which are relevant to show that the ruling of the court below is correct and does not present a substantial question which needs further argument here. Believing that it would serve no useful purpose to repeat or rephrase those arguments, appellees respectfully

*The same question is presented by *United States v. Kniss*, No. 762, this Term, which is pending on jurisdictional statement.

ask that said briefs be incorporated as their argument in support of this Motion to Affirm.

We concur with the Government's suggestion that the Court defer acting on this Motion to Affirm until *Wise* has been decided. If the Court affirms in *Wise*, it would be appropriate to affirm summarily the judgment below.

Conclusion.

The appeal presents no substantial legal issue, and the judgment of the trial court should be affirmed summarily. However, in view of the pendency of the *Wise* case, the court should defer acting on this motion until *Wise* has been decided.

Respectfully submitted.

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